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To: Secretary, Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

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Federal Communications Commission
Office of the Secretary

From: Jean Prewitt

RE: Ex Parte Meeting/Presentation

Docket: MB Docket 06-121

On October 1, Jean Prewitt, President and CEO of the Independent Film and Television Alliance, accompanied by Meyer Shwarzstein, Lloyd Kaufman, Michael Weiser and Kimberley Fritts met with Chairman Martin, Commissioner McDowell and Commissioner Tate to discuss IFTA's filing in the Broadcast Ownership proceeding (MB Docket – 06-121).

A copy of the IFTA comments filed in that proceeding, a summary of the comments, an accompanying study and summary, and a one pager on IFTA were provided at that meeting. Copies have been submitted to the Secretary of the FCC.

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Independent
Film & Television
Alliance

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ABOUT IFTA

The Independent Film & Television Alliance (IFTA) is the trade association for the independent film and television industry. IFTA is the voice and advocate for the industry and is committed to enhancing and protecting its members' ability to finance, produce, distribute and market independent films and television programs.

In this capacity, IFTA also engages in education efforts aimed at dispelling the notion that "independent" means little known and low-budget – when in reality it refers to the fact that financing for the film or television program came from sources outside of the seven "major studios" (Buena Vista Pictures Distribution/The Walt Disney Company, MGM, Paramount Pictures Corporation, Sony Pictures Entertainment, Inc., Twentieth Century Fox, Universal Studios, and Warner Brothers Entertainment, Inc.).

IFTA defines independent producers and distributors as those companies and individuals (apart from the major studios) that assume the majority – more than 50 percent – of the financial risk for production of a film or television program and control its distribution in the majority of the world. Independent films are financed from a number of sources, including advance commitments by distributors, and they are made at every budget range. It is this financial risk-taking that fosters creativity and makes independent productions unique.

IFTA's membership includes well-known independent film companies, such as LIONSGATE, The Weinstein Company, and Lakeshore International. Since 1980, over half of the Academy Award winners for Best Picture have been produced and/or distributed by IFTA member companies, including this year's *The Departed* and last year's *Crash*. IFTA members have produced relatively large budget films, such as the *Lord of the Rings* trilogy, *Million Dollar Baby, Wedding Crashers, Black Dahlia*, and *Mr. and Mrs. Smith* as well as box office surprises, such as *My Big Fat Greek Wedding* and *Bend it Like Beckham* – both of which were produced on more modest budgets.

IFTA is a nonprofit organization that represents more than 170 members from 22 countries, including independent production and distribution companies, sales agents, television companies, studio-affiliated companies and financial institutions engaged in film finance. Collectively, its members produce more than 400 independent films and countless hours of television programming each year and generate more than $4 billion in distribution revenues annually.

Today, IFTA's American Film Market is the largest motion picture trade show in the world. Unlike a film festival, the AFM is a marketplace where production and distribution deals are closed. In just eight days, more than $800 million in deals are sealed – on both completed films and those that haven't started shooting yet. With 8,000 attendees, 900 screenings, and seminars by leading industry organizations, the AFM is the pivotal destination for independent filmmakers and businesspeople from around the world.

2006 FCC Biennial Review of Media Ownership Rules / Regulations
Summary of Comments Filed by IFTA

Overview

IFTA's comments to the FCC focused on the need for that body to ensure that the public has access to best and most diversified entertainment programming possible. In the past, public access to such programming was assured by the amount of independent product available to consumers. However, this situation has changed dramatically since the mid-nineties for both independent producers and consumers alike due to the following:

1) The repeal of the Financial Interest / Syndication rules and their related consent decree.
2) The vertical integration of the major studios with the national television networks and certain major cable MSOs

The current situation has both lowered the quality of programming available and eliminated dozens of independent production and syndication companies, destroying an infrastructure of independent production and its role as both a source of diversified entertainment product and a training ground for the next generation of directors, writers, and producers.

The dearth of independently produced programming is seen most graphically by looking at the most lucrative portions of the television sector, network primetime and syndication. In 1989 the amount of primetime programming owned by the networks was just 15%. Today it is over 75%. During the same period, **independent programming** in primetime **has fallen from 50% to just 18%** *(See Table 1, below)*.Without access to primetime, independent producers are also shut out of the television syndication market and the income stream that it represents. The situation has been replicated in cable and satellite television where fully 28 of the 29 channels that are legitimate buyers of scripted programming are owned or controlled one of the vertically integrated media conglomerates.

Table 1: US Primetime Programming Comparison

Programming Ownership	1989	Today
Networks	15%	75%
Independents	50%	18%

Source: Mara Einstein, *"Media Diversity: Economics, Ownership and the FCC", and* Baseline Research, *Fall Television Schedule: 2006-2007 Season.*

Where there are opportunities for independent producers, the independents face a number of impediments. The networks may force independent producers to fund development and/or produce a pilot on a loss basis and then demand an equity position in a show in order for it to be put on the prime time schedule; they may require control of syndication of an independent program, and then sell that show to an affiliated cable channel at a discount, thus reducing the 'backend' participation of the independent producer; and the network may give independently produced shows a less attractive time slot and less time to prove itself when it is placed on the network schedule.

Action Recommended By IFTA:

In its FCC filing IFTA recommended that the Commission create regulations that mandate that no more than 75% of programming on:

1) The national networks' prime time schedules
2) The entire daily schedule of network multiplex channels provided to affiliates
3) The entire daily schedule of basic cable, pay cable, and satellite channels

Should be produced by:

1) The network, or any captive or affiliated entity
2) Entities controlled by or affiliated with, any other major national television network
3) Entities controlled by or affiliated with, any of the top ten national cable MSOs or any national, direct broadcast satellite operator.

Thus 25% of all television programming would then available to be filled by independents.

SAG, DGA, PGA, AFTRA, AFL-CIO Filing:

Making many of the same points as IFTA, Joint Comments were filed with the FCC by the Screen Actors Guild, the Directors Guild, the Producers Guild, the American Federation of Television & Radio Artists, and the American Federation of Labor – Congress of Industrial Organizations.

With reference to the network primetime schedule only, this group recommended a similar "set aside". Namely, the enactment of the following narrowly tailored, content-neutral rule:

A 25% independent producer requirement for network primetime programming.

"The Impact of the Vertically Integrated, Television-Movie Studio Oligopoly On Source Diversity and Independent Production"

Summary of Research Paper Authored by

Mark Cooper, Ph.D., Director of Research, Consumer Federation of America

Independent producers of entertainment product are being excluded from both prime time network television and from the major cable channels that form the nexus of the American public's entertainment experience.

As television in all its forms has become the dominant media through which the American public is entertained, kept informed, and exposed to new ideas, this situation is anathema to both the free expression ideal and the open pursuit of commerce that are the bedrock of our way of life.

This state of affairs is directly related to three major policy changes in the early and mid- 1990s that affected the production and distribution of video content, primarily broadcast television programming in America:

1) The repeal of the Financial Interest / Syndication rules
2) The enactment of the Cable Act of 1992
3) The enactment of the Telecommunications Act of 1996.

These policy changes led to the formation of a vertically integrated oligopoly in television entertainment and a dramatic shrinkage of the role of independent producers of content, causing:

- Economic hardship for independent producers
- Less diversity of program choice for consumers
- Reduced incentives to independents to even try to provide diversified product.

Network Prime Time

In the ten years since the repeal of Fin / Syn, a vertically integrated oligopoly has arisen that has come to dominate all forms of television. In network television, the amount of programming in prime time owned by the networks has grown from **15% in 1995 to 75% today** while independent programming has fallen from **50% to just 18%.**

The network prime time schedule is the most important point of access for program suppliers because:

- It remains the most financially remunerative domestic revenue opportunity.
- It is the gateway to the lucrative syndication market.
- It affects the prices that non-U.S. TV channels will pay for product.

Today, five vertically integrated companies dominate the television broadcast and production landscape: News Corp. (Fox), NBC / Universal, ABC / Disney, CBS / Paramount, Time Warner. These companies own the four TV broadcast networks, major film studios, local television stations, and the majority of both pay and basic cable television channels. These companies dominate the market and exercise monopsony (buyer) power if and when they buy product from independent producers.

Monopsony power is the ability to dictate price, terms, and conditions from suppliers. The "big five" follow a number of non-competitive practices when with regard to obtaining programming for the prime time schedule:

- Many shows are produced by in-house units and sold internally at reduced prices.
- Some shows are obtained from units of other vertically integrated companies.
- The few shows that are obtained from independent producers are done so under prejudicial terms and the use of unfair practices.

Among the most egregious of these "prejudicial terms and practices" are:

- Forcing independent producers to fund development then demanding an equity position in a show in order for it to be put on the prime time schedule.
- Commissioning a pilot from an independent producer for less money than is necessary to produce the pilot and then demanding an equity share if the show is picked up for the prime time schedule.
- Selling the independently produced show they have obtained show to cable channels owned by the conglomerate at a discount, thus reducing the "backend" participation of the independent producer.
- Giving an independently produced show a less attractive time slot and less time to prove itself when it is placed on the network schedule.

The Syndication Market

The syndication market is largely comprised of product that is of network prime time origin. However, the work of independent producers has virtually disappeared from this important and lucrative venue. Independents now account for **just 18%** of all first run syndication programming hours and **none of the programming hours** for shows that have gone into syndication over the last two years.

Revenues generated by syndication sales can help independents fund development of future production and possible future syndication sales. The repeated showing of product in syndication enhances a producer's reputation not only within the industry but also with the public in general.

Cable Television

Many have pointed to the supposed abundance of opportunity for program suppliers offered by cable television. This is illusory due to vertical integration.

The vertically integrated media companies own 24 of the top 25 cable channels. The independents' share of pay cable programming also continues to decline as a percentage of programming, **dropping by some 15%** since the late nineties.

Independent programming rarely appears on the premium pay cable channels such as Showtime and HBO. Generally programming for these channels is done in-house or by producers who have contracted with the pay channel to produce product under many of the same "prejudicial terms" as those practiced by network acquisitions.

Independent product is increasingly consigned to the far less visible and less financially rewarding basic cable channels where license fees are much lower and in many cases inadequate to cover production costs. Additionally, product placed on basic cable does not have the same potential to realize foreign sales that pay cable product enjoys.

The "Quality" Issue

While it is extremely difficult to assess the impact of the changes in the industry on quality, there is no doubt that the independent sector was a consistent source of innovative and high quality content in both the TV series and movies categories prior to the changes in policy.

Measured by both popularity and awards, the independents more than hold their own when given a chance to reach the public. This quantitative evidence reinforces the celebrated anecdotal evidence – shows like *All in the Family* and *Cosby* – frequently offered about the importance of independent production. It is quite clear that the elimination of independents from the high value TV product spaces – prime time and premium cable – cannot be attributed to poor quality of product. It is more readily attributed to changes in the structure of the industry and the business practices of the dominant, vertically integrated oligopoly.

The Digital World

While the situation in television cries out for remedy, it is critical that it not be replicated in the emerging digital delivery platforms.

Already, we are seeing the vertically integrated conglomerates acting as aggregators and monetizing content distribution. Their sheer size and the resources that can bring to bear allow these companies to absorb years of losses while developing revenue streams from online content through advertising and pay-per-view models.

The vertically integrated conglomerates are starting Video-on-Demand services and acquiring such important internet destinations as My Space (Fox) and AOL (Time Warner) and doing deals for placement of their product on iTunes and Google.

The potential of the internet to function as unfiltered forum for ideas and as open access opportunity by entrepreneurs of all stripes is at risk when the vertically integrated conglomerates are allowed to practice a variation on the gatekeeper role that they have established for themselves in television.

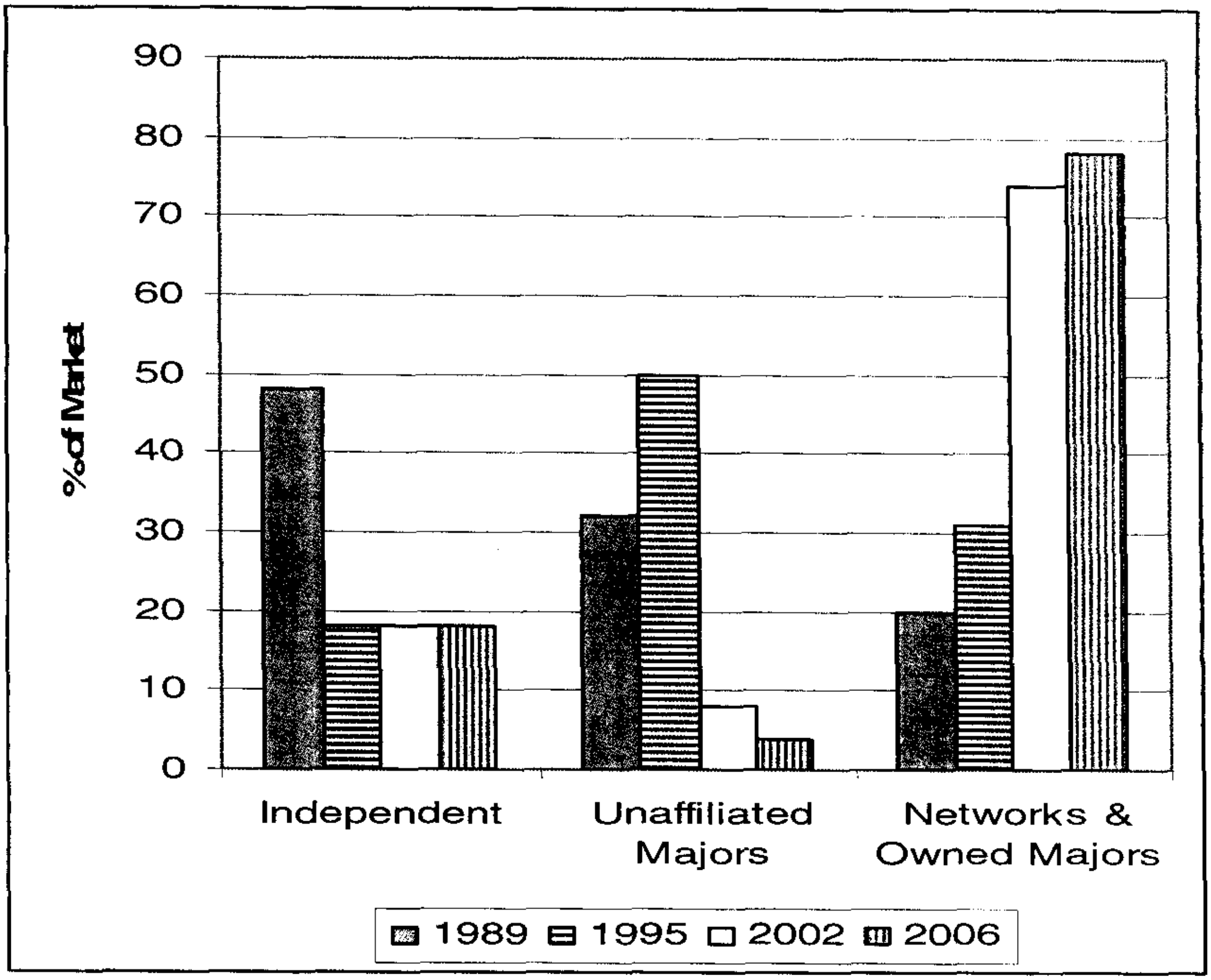
In the internet world the gatekeeper problem changes from vertically integrated companies controlling limited shelf space (i.e. placement on the network prime time schedule) to that of control of visibility and the placement of product in a world of infinite shelf space.

With so much available on the internet, audiences can not find independent producers' product unless it receives a fair chance at being prominently placed on the most popular internet portals and program guides.

As we move into the age of digital distribution, it is imperative that the vertically integrated conglomerates not be allowed to become the gatekeepers of internet, imposing the same egregious terms and following the same exclusionary strategies that have reduced consumer access to diversified product and the voices that produce it.

IV. DOMINATION OF THE TELEVISION PRODUCT SPACE

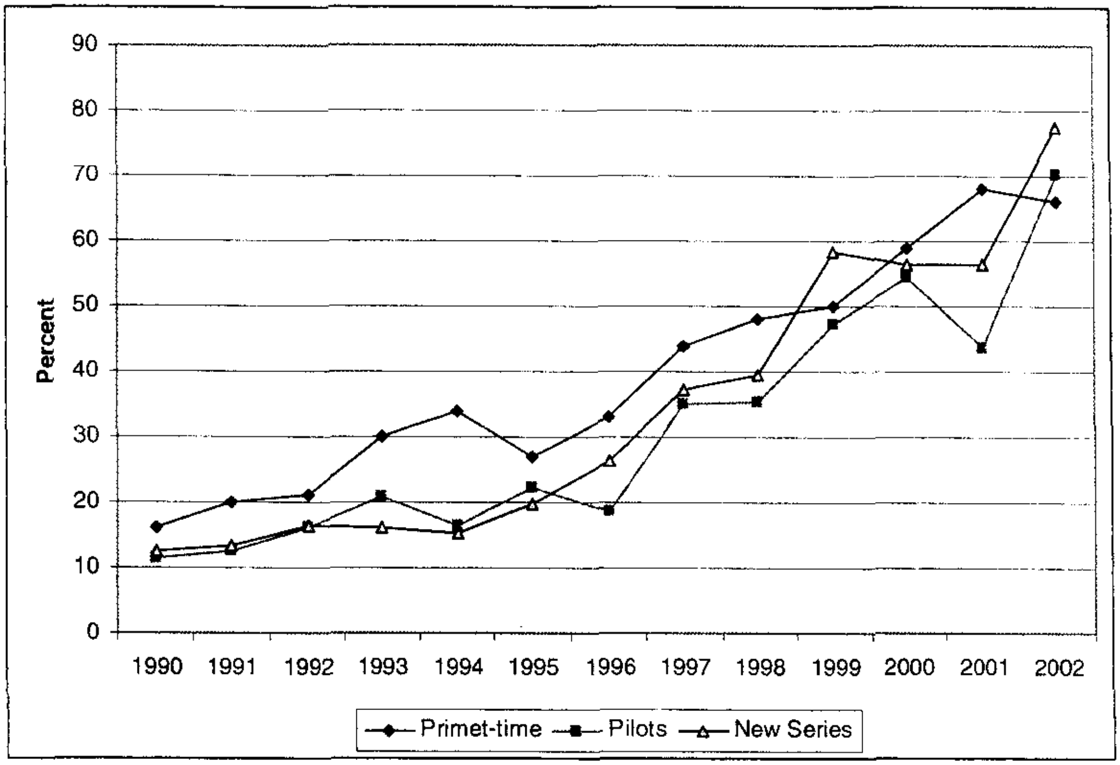
Exhibit IV-1:
Prime Time Market Shares



Source: 1989-2002 calculated from Mara Einstein, *Media Diversity: Economics, Ownership and the FCC* (Mahwah: Lawrence Erlbaum, 2004), p. 169; 2006 based on Baseline Research, *Fall Television Schedule: 2006-2007 Season.*

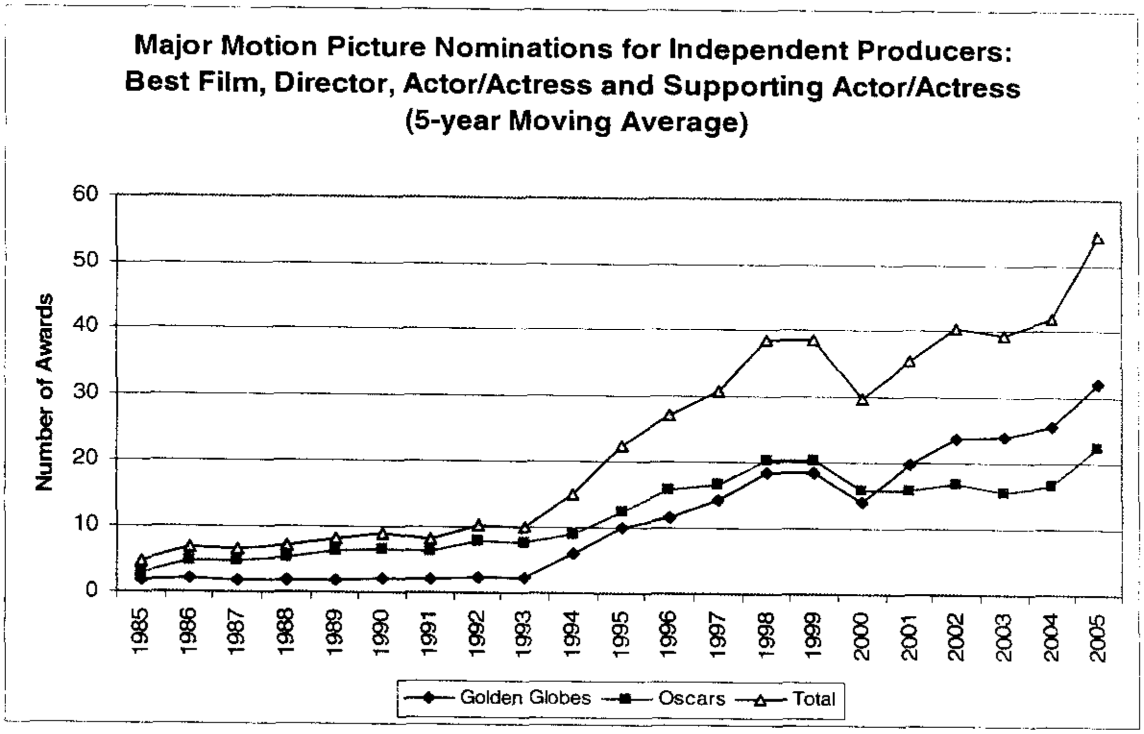
Exhibit IV-3:

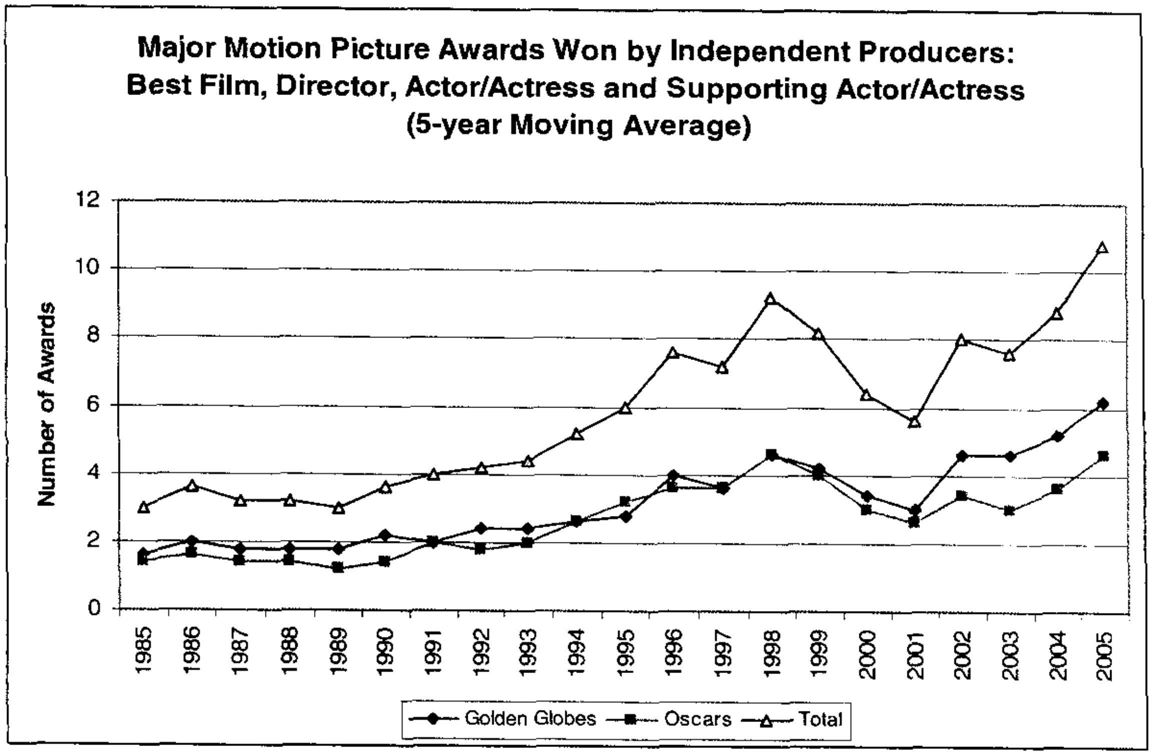
Network Ownership of Prime-Time Programming 1990-2002



Source: Calculated from Mara Einstein, *Media Diversity: Economics, Ownership and the FCC* (Mahwah: Lawrence Erbium, 2004), p. 171; William T. Bielby and Denise D. Bielby, "Controlling Prime Time: Organizational Concentration and Network Television Programming Strategies," *Journal of Broadcasting & Electronic Media,* 47: 4 (2003), p. 588.

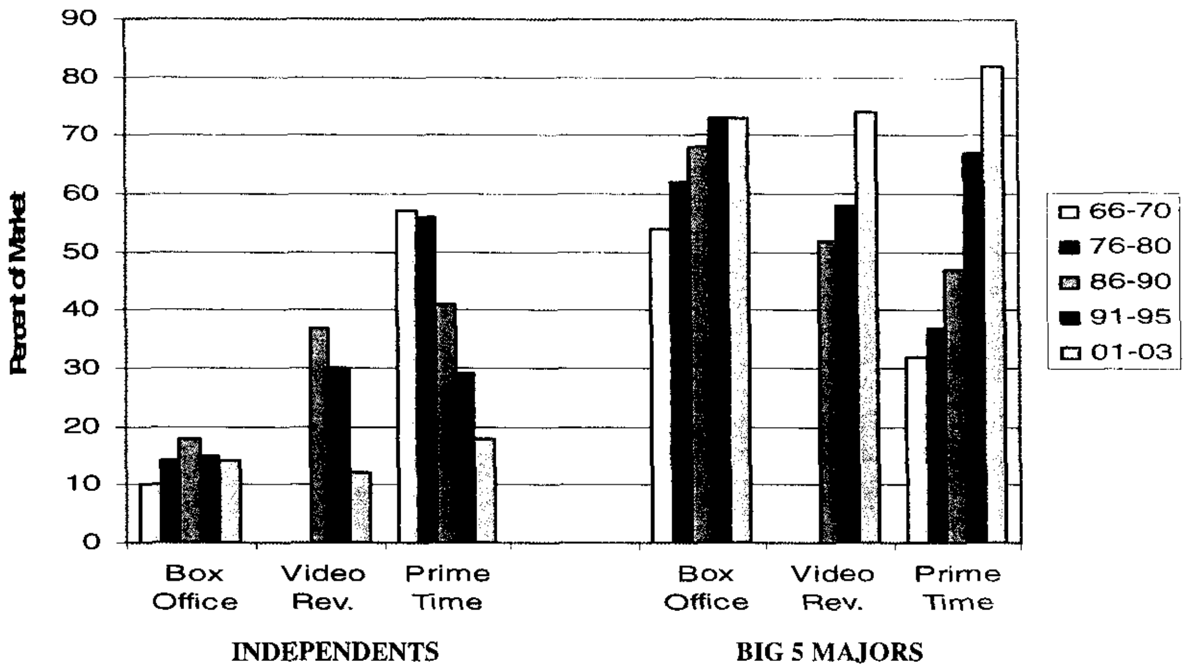
Exhibit VI-1:
Major Categories, Golden Globes and Oscars: Majors v. Independents





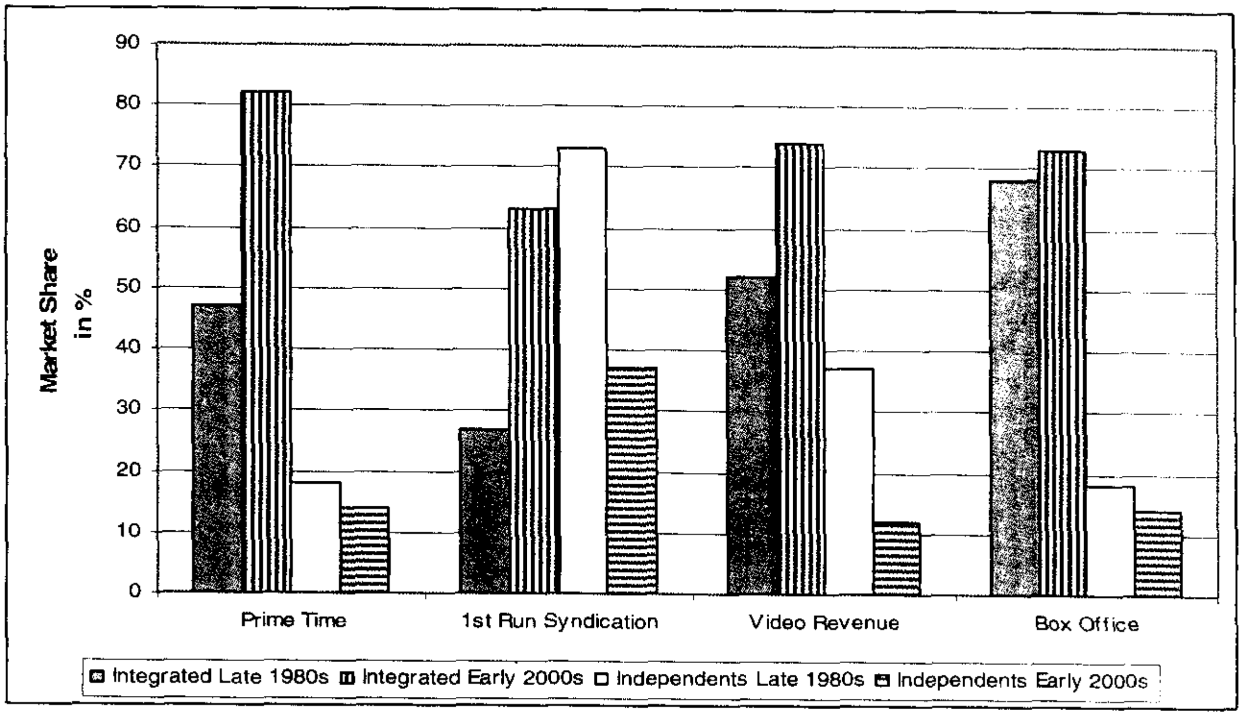
Source: Box Office Mojo.com

Exhibit VI-3:
The Shares of Independent Producers in Box Office, Video Revenue and Prime Time Hours Late 1960s to Early 2000s



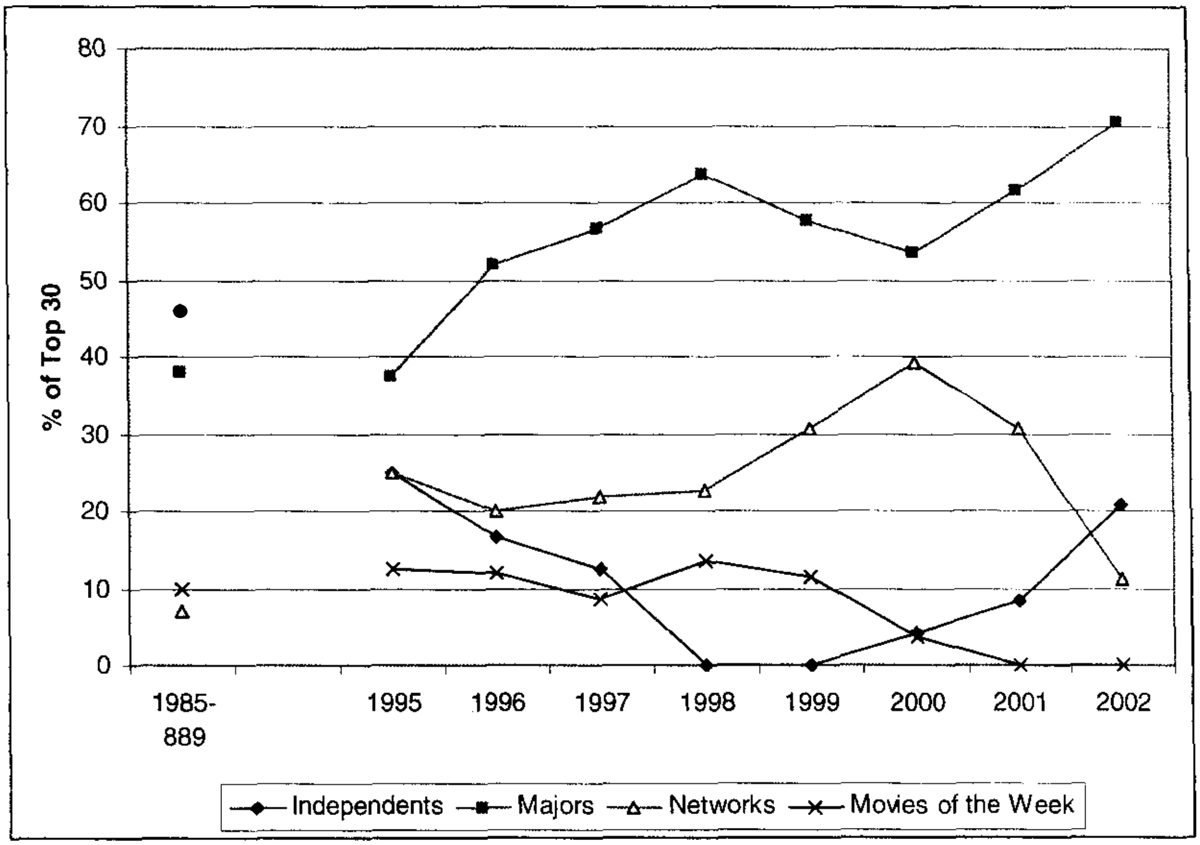
Sources. Box Office and Video Revenue are five year averages from David Waterman, *Hollywood's Road to Riches* (Cambridge: Harvard University Press, 2005), pp. 21, 25, 86-90 and 01-03. Big Five Majors are the studios that have been acquired by major TV programmers – Disney/ABC; Fox/20th Century Fox; NBC/Universal; Warner Bros.; CBS/paramount. Other majors (not shown) are MGM/UA and Columbia. Independents are what Waterman calls "the residual." Prime Time is percent of hours in 1989, and 2002 from Mara Einstein, *Program diversity and the Program Selection Process on Broadcast Network Television* (Washington D.C.: Federal Communications Commission, September 2003), pp. 26. First-run syndication is from C. Puresell and C. Ross, "Vertical Integration and Syndication," *Electronic Media,* 22(1): 2003, for 1993 and 2002. It includes only vertical integration and not internal dealing among the big 5.

Exhibit VI-4:
Growth of Big 5 Market Share and Vertical Integration in Domestic Markets: Late 1980s to Early 2000s



Sources. Box Office and Video Revenue are five year averages from David Waterman, *Hollywood's Road to Riches* (Cambridge: Harvard University Press, 2005), pp. 21, 25, 86-90 and 01-03. Big Five Majors are the studios that have been acquired by major TV programmers – Disney/ABC; Fox/20th Century Fox; NBC/Universal; Warner Bros.; CBS/paramount. Other majors (not shown) are MGM/UA and Columbia. Independents are what Waterman calls "the residual." Prime Time is percent of hours in 1989, and 2002 from Mara Einstein, *Program diversity and the Program Selection Process on Broadcast Network Television* (Washington D.C.: Federal Communications Commission, September 2003), pp. 26. First-run syndication is from C. Puresell and C. Ross, "Vertical Integration and Syndication," *Electronic Media,* 22(1): 2003, for 1993 and 2002. It includes only vertical integration and not internal dealing among the big 5.

Exhibit VI-5:
Producers of Top 30-Rated TV Shows.



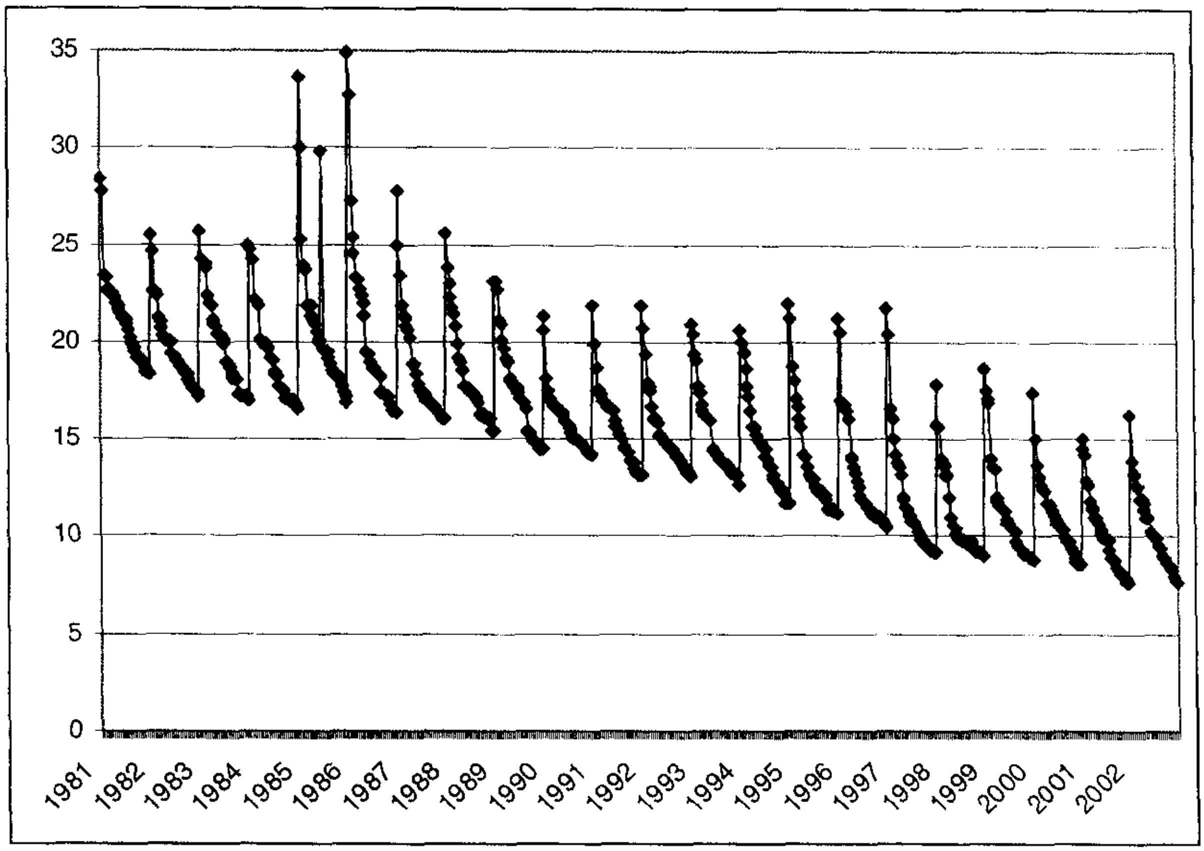
Source: Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows: 1946 – Present,* (New York: Ballantine, 2003), Appendix 3; Beta Study System database.

Exhibit VI-6:
Emmys for Best Comedy and Drama

Producer	80-84	85-89	90-94	95-99	00-04
Independents	70	40	20	0	0
Networks	20	40	50	100	60
Majors	10	20	30	0	40

Source: Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows: 1946 – Present,* (New York: Ballantine, 2003), Appendix 3; Beta Study System database.

Exhibit VI-7: Declining Ratings of the Top 30 TV Shows



Source: Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows: 1946 – Present,* (New York: Ballantine, 2003), Appendix 3; Beta Study System database.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	**MB Docket No. 06-121**
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	**MB Docket No. 02-277**
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	**MM Docket No. 01-235**
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	**MM Docket No. 01-317**
	)	
Definition of Radio Markets	)	**MM Docket No. 00-244**

To: The Commission

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

INDEPENDENT FILM & TELEVISION ALLIANCE

By Jean M. Prewitt
President and Chief Executive Officer

Independent Film and Television Alliance
10850 Wilshire Boulevard, 9th Floor
Los Angeles, CA 90024-4321
October 23, 2006

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SUMMARY

The Independent Film & Television Alliance ("IFTA"), the trade association for the independent film and television industry worldwide, hereby submits its comments, together with the newly-conducted industry impact study filed as an appendix, with respect to the pending *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121 et al. IFTA suggests modest new regulations which would go a long way toward restoring a level of source diversity which has disappeared from American television.

Since the elimination of the Financial Interest and Syndication Rules, and their related consent decree, and the relaxation of multiple ownership rules, there has been a sea change in the television marketplace. Through the early 1990s, major and minor studios and independent production companies licensed programming to networks, which exhibited that programming on large numbers of affiliated independent station licensees and a few owned and operated (O&O) stations, and unrelated syndicators later marketed reruns to independent stations and cable/satellite programming services. That system has now morphed into a world of a few vertically integrated media giants which self-produce, exhibit on networks feeding groups of affiliates substantially owned by or having financial ties to the studio/network, and themselves repurpose that programming to their own secondary networks or affiliated cable/satellite programming services. As a result of these structural changes, there is little program diversity, program quality has declined, and the free flow of ideas has been impeded.

IFTA urges the Commission to adopt reasonable and limited regulations to restore some semblance of balance to the marketplace for television programming. In essence, IFTA requests that the Commission limit the amount of self-sourced programming that the major television networks may distribute on their primary networks, or on secondary

or tertiary digital multicast channels. We also suggest these limits apply to cable program services owned, controlled by, or affiliated with either the major networks or the largest cable MSOs and DBS satellite system operators. After much thought, IFTA has concluded that a very modest reduction should suffice. Therefore, IFTA proposes that these types of entities be limited to supplying 75% of their own programming (including programming supplied by another of the vertically integrated giants); the remaining 25% would be obtained from the panoply of other national and international program producers and distributors.

By taking these very small steps, which are wholly within the Commission's authority, the Commission will go a long way towards insuring the survival of an independent production community. The public interest requires no less.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	**MB Docket No. 06-121**
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Definition of Radio Markets	)	**MM Docket No. 00-244**

To: The Commission

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

The Independent Film & Television Alliance ("IFTA"), the trade association of the independent film and television industry worldwide, respectfully submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.

I. BACKGROUND

The Independent Film & Television Alliance is the trade association for the independent film and television industry worldwide. Our non-profit organization represents more than 175 members from 22 countries, consisting of independent[1] production and distribution companies, sales agents, television companies, studio-affiliated companies and financial institutions engaged in film finance.[2]

IFTA was established in 1980 as the American Film Marketing Association. In 2004, the association formally changed its name to the Independent Film and Television Alliance to recognize its global membership and its mission to promote the independent industry throughout the world.

IFTA's membership includes such well-known independent film companies as LIONSGATE, The Weinstein Company, and Lakeshore International. Since 1980, over one-half of the Academy Award winners for Best Picture have been produced by IFTA member companies, including this year's "Crash." IFTA members have produced such relatively large budget films as "The Lord of the Rings" trilogy, "Million Dollar Baby," "Wedding Crashers," "Black Dahlia" and "Mr. and Mrs. Smith," as well as box office surprises such as "My Big Fat Greek Wedding" and "Bend it Like Beckham," both of which were produced on more modest budgets. These popular movies are a source of pride for all of our members.

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[1] IFTA defines "independent" producers and distributors as those companies and individuals apart from the major studios that assume the majority (more than 50%) of the financial risk for production of a film or television program and control its exploitation in the majority of the world.

[2] Independent films and television programs are financed primarily from sources outside of the seven major U.S. studios. They are financed individually from a number of sources, including by advance commitments from national distributors around the world. They are made at every budget range and may be mainstream, commercial or art-house.

The success of some independents, however, does not alter the fact that most independent producers and distributors are small companies operating on very tight margins. Examples include lesser known companies such as Cine Tel Films, Worldwide Entertainment, and Imagination, which depend for their very survival on a mix of revenues from domestic and international theatrical exhibition; syndication to broadcast, cable and satellite television services; and DVD and video tape sales. It is no exaggeration to say that many of our members bet the company on each film they make.

This bet became much more risky with the repeal of the Financial Interest - Syndication rule in the mid-nineties. The action led to vertical integration of the national broadcast networks and the major studios and to problems for the independents. Television which once was a vital market for independent product became unreachable. With access to their own programming, the networks moved quickly to eliminate independent product from their schedules.

First network prime time was closed to independents and with it the lucrative syndication market. Next premium cable was eliminated as the vertically integrated network/studios bought existing cable channels and created new ones. Independents were relegated to producing movies for basic cable/satellite programming services at license fees far below the cost of the production elements demanded by the service.

The current situation has become intolerable both for independent producers and for the society at large. It must be addressed not only for the present day but also for the future. As we move into the age of the internet and other digital distribution platforms, the vertically integrated conglomerates must not be allowed to replicate practices that strike at the very heart of free competition and free speech.

II. THE RISE OF THE INDEPENDENT FILM AND TELEVISION INDUSTRY

The independent film and television industry has been an integral part of American culture since these mediums were born. We enrich America's marketplace of ideas by encouraging creativity and diversity of opinion, and foster competitiveness in an industry that is increasingly dominated by a select few. Moreover, because of their own knowledge of the entertainment industry, IFTA members have a special perspective on and concern about maintaining a competitive marketplace.

The very creation of the modern independent film industry was made possible only by decisive government action designed to diminish the market power of the vertically integrated motion picture studios. Under the system which prevailed for decades up until the late 1940s, a handful of Hollywood moguls held a strangle-hold over the industry. Under the system then in effect, the studios controlled virtually all aspects of the industry -- talent, production facilities, distribution networks and exhibition venues. And cinema was the preeminent form of popular entertainment in the period before television ownership became ubiquitous.

A series of antitrust cases brought by the Justice Department against the major film studios, including the Supreme Court's *Paramount* decision, culminated in 1948 with a series of Consent Decrees that severed production and distribution of films from exhibition of films (i.e., theater ownership). *See U.S. v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948) and its progeny. Once movie theaters were transferred to independent ownership, and were freed from studio-imposed strictures like block booking, competition opened up so that independents could distribute their films theatrically in the United States.

Led by American International Pictures, new independent film companies rushed into the breech. Open competition also led to the exhibition in the U.S. of outstanding foreign films, which previously had been unable to obtain access to U.S. screens. For decades after the promulgation of the 1948 Consent Decrees, a special combination of creativity, entrepreneurship, and government policy enabled the independent film industry, and eventually the independent television industry, to flourish.

This golden age of independent production was embellished by the growth of television as a major distributor of film and video programming, beginning about 1950. To IFTA members, these were really two sides of the same market, and independent producers began to move back and forth between theatrical films and television productions. FCC ownership rules which prevented the motion picture studios from dominating the broadcasting industry, and the 1970 financial interest and syndication ("Fin-Syn") rules along with the Consent Decree of 1977 which prevented the networks from establishing their own vertically integrated oligopolies, aided greatly in maintaining both the theatrical exhibition and television markets as competitive markets for independent producers. *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 23 F.C.C.2d 382 (1970).

A good example of the benefits brought on by the government's actions fostering the independent production industry can be seen in the career of Roger Corman, the legendary independent film producer. Corman began making independent films for theaters opened by the consent decree; once he was firmly established, Corman became the top U.S. distributor of prestigious foreign films. Corman took advantage of every distribution avenue available, making films for the straight-to-video-market (at one time Corman had the largest library of video titles in circulation), then producing Showtime original movies and a Sci-Fi Channel television series, all the while continuing to independently produce feature films.

Roger Corman's career is significant to the viewing audience for another reason. As an independent, Corman was able to nurture iconoclastic young filmmakers who were reluctant to submit to the constraints of the studio system. Francis Ford Coppola, Martin Scorsese, Gale Ann Hurd, Carl Franklin, Ron Howard, James Cameron, and Jonathan Demme are among the esteemed directors and producers who made their first films for Corman.[3] Independent production companies have been the nurturing ground for independent attitudes and alternative viewpoints and have been essential in maintaining diversity in the marketplace of ideas.

III. THE PROBLEM

Times have changed. The independent film and television industry, which would have never been born but for the federal government's good work in separating producers from exhibitors, is being severely damaged by the establishment of massive vertically integrated distributors that control not just production and theatrical distribution, but in some cases a combination of production, distribution both to theatres and network television, and syndication to broadcast syndication and cable and satellite outlets.

The Commission has long recognized that "there is strong public interest in maintaining diverse sources of network programming as well as diverse sources of off-network programming to local independent broadcast stations." *Evaluation of the*

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[3] Concord-New Horizons, Mr. Corman's production company, is a member of IFTA and Mr. Corman is a member of the IFTA Board of Directors.

Syndication and Financial Interest Rules, 6 FCC Rcd 3094, at ¶ 10 (1991). The Commission has also recognized that "there is a strong public interest in maintaining diverse, competitive sources of first-run programming to local independent and affiliate broadcast stations." *Id.*

The Commission's decision to eliminate its former Fin-Syn regulations under the assumption that competition would be adequate to curb network excesses did not undermine its commitment to these "strong public interests," nor close the door on reregulation. In fact, the Commission specifically noted that it would be impossible to "know to a certainty how the networks will behave until they are free to act" and that therefore it would be "crucial to monitor developments in the market closely, to ensure that our predictions about network behavior and the effects of that behavior are accurate." *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282, at ¶ 56 (1993).

Far from a competitive marketplace, independents now have to deal with entities such as Fox, which controls the 20th Century Fox studio and its film and television distribution arms; two national television networks; O&O stations in key major markets; the DirecTV satellite system; and cable/satellite channels such as FX and the National Geographic Channel. We also have to deal with NBC, which controls Universal studios; the distribution of Universal films and syndication of off-network NBC product; the NBC and Telemundo networks; O&O stations; and 10 cable/satellite channels, including Bravo and USA Network. Similarly, a key part of our market is controlled by ABC, which is commonly owned with the Disney studio; operates the ABC Television Network; distributes film and television programming; has an O&O station group; and controls important cable/satellite channels such as the Disney Channel and the ABC Family Channel. Finally, we deal with CBS, which, while partially separated from Viacom, continues a close business relationship with that company and its subsidiary, Paramount Pictures,[4] operates television producer and syndicator King Features and is closely tied to theatre owner National Amusements, operates O&O stations, and operates multiple cable/satellite program services, such as Showtime. Even the non-broadcast market is constrained: most of the major cable/satellite program services, if not owned by one of the studios or networks, is owned by one of a handful of cable Multiple System Operators (MSOs), such as Comcast and Time Warner.

Since 1993, the content aired on prime time network television, television syndication and cable and satellite channels increasingly has been controlled by a small number of vertically integrated entities. This dramatic reduction of independent programming on broadcast and cable television is discussed in these comments and the attached 2006 study, "The Impact of the Vertically Integrated, Television-Movie Studio Oligopoly on Source Diversity and Independent Production," by Mark Cooper, Ph.D., which was prepared for IFTA. IFTA submits this study (Appendix A) as part of its comments.

Under the present vertically integrated system, many of the programs carried in prime time have been produced by in-house units and sold internally at reduced prices.

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[4] Viacom split into New Viacom and CBS Corp., but both continue to be under the common control of National Amusements, Inc. New Viacom and CBS Corp. will initially have four common directors. Sumner M. Redstone, the controlling shareholder, chairman of the board of directors and CEO of National Amusements will serve as chairman of the board of directors of both New Viacom and CBS; Shari Redstone, president and a director of national Amusements, will serve as non-executive vice-chair of both companies, and Mr. Philippe P. Dauman, a director of National Amusements, Inc., and Mr. Frederic V. Salerno will serve as directors of both New Viacom and CBS Corp. Viacom, Inc., Registration Statement, filed with the Securities and Exchange Commission on Form S-4, October 5, 2005, at 4. The companies will maintain numerous contractual and other ties. Id. at 227-31.